

# **Exhibit H**

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Attorneys for Plaintiff  
 HARTFORD CASUALTY INSURANCE COMPANY

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

HARTFORD CASUALTY INSURANCE  
 COMPANY, an Indiana Corporation,

Plaintiff,

v.

FIREMAN'S FUND INSURANCE  
 COMPANY, a California Corporation; BURNS  
 & WILCOX INSURANCE SERVICES, INC., a  
 California Corporation; and DOES 1 to 50,

Defendants.

BURNS & WILCOX INSURANCE  
 SERVICES, INC., a California Corporation,

Cross-Complainant,

v.

MOSEN O'HADI aka MOSEN 'OHAD dba  
 MALIBU PACIFIC and/or MALIBU PACIFIC  
 REAL ESTATE CO and/or MALIBU  
 COASTAL INSURANCE SERVICES, and  
 DOES 1 – 100, inclusive,

Cross-Defendants,

CASE NO. 15-cv-02592-SI

**DECLARATION OF JAMES ROBERTSON  
 IN SUPPORT OF PLAINTIFF HARTFORD  
 CASUALTY INSURANCE COMPANY'S  
 SUPPLEMENTAL OPPOSITION TO  
 FIREMAN'S FUND'S MOTION FOR  
 SUMMARY JUDGMENT**

**Hearing Date:** July 8, 2016  
 9:00 a.m.  
**Dept.:** Courtroom 1, 17th Floor  
**Judge:** Honorable Susan Illston  
**Complaint Filed:** June 10, 2015  
**Trial:** November 14, 2016  
 8:30 am

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1 I, James Robertson, declare as follows:

2 1. I have personal knowledge of each matter stated herein and, if called as a witness, I  
3 could and would competently testify thereto. I am familiar with the facts set forth in this  
4 declaration.

5 2. I submit this declaration in support of Plaintiff Hartford Casualty Insurance  
6 Company's ("Hartford") Supplemental Opposition to Fireman's Fund Insurance Company's  
7 ("Fireman's Fund") Motion for Summary Judgment.

8 3. I have been involved in the insurance industry since 1970, and have extensive  
9 experience regarding the underwriting of both personal and commercial lines insurance policies in  
10 California. Since 1992 I have been the President and Chief Executive Officer of Interisk Limited,  
11 providing services related to risk management and insurance litigation consulting, including  
12 underwriting matters.

13 4. A true and correct copy of my current curriculum vitae is attached hereto as Exhibit  
14 "O".

15 5. I have been retained by Hartford with regard to the instant lawsuit and, for the  
16 purpose of this declaration, asked to provide my professional opinion on certain topics regarding  
17 the underwriting of the Fireman's Fund insurance policies involved in this case.

18 6. I have completed a preliminary review of several thousand pages of documents  
19 relative to this case, including but not limited to the documents produced in discovery by Fireman's  
20 Fund, Burns & Wilcox Insurance Services, Inc. ("Burns & Wilcox"), and Mosen O'Hadi. I have  
21 also reviewed Hartford's Second Amended Complaint, the exhibits attached thereto, and Fireman's  
22 Fund's Answer and Counterclaim for Rescission.

23 7. I have also reviewed a Fireman's Fund primary homeowners' policy, policy number  
24 NZA 335 54 52 ("Fireman's Fund Primary Policy"), and a Fireman's Fund excess policy, policy  
25 number NZA 242 90 23 ("Fireman's Fund Excess Policy"). In addition, I reviewed the  
26 underwriting notes ("SRS notes") relative to the Fireman's Fund Primary Policy and Fireman's  
27 Fund Excess Policy which I understand were produced by Fireman's Fund in discovery in this case.

28 8. I have further reviewed the deposition transcripts of Mosen O'Hadi, Donna Bacarti,

1 Marc Orloff, and Lynn Hadfield taken in the instant case.

2 9. In the various roles I have held in the insurance industry since the 1970s, I have been  
3 involved in the underwriting of multitudes of personal and commercial lines policies with numerous  
4 insurance companies.

5 10. Based upon my training and extensive experience in the insurance industry and as an  
6 underwriter, when an agent or broker requests that a named insured be listed on the application for  
7 a policy, that is the named insured for whom the risk should be evaluated and, if the decision is made  
8 to underwrite the risk and issue the policy, for whom the policy should be placed.

9 11. When an underwriter is considering an application for, and issuance of, an excess  
10 policy that purports to cover a given risk (*e.g.*, a location or property), the underwriter of the excess  
11 policy must take into account the individual(s), entity, or entities, which have an ownership interest  
12 in that risk. In this context, such an ownership interest can and should be considered to be an  
13 insurable interest (also sometimes characterized as a "liability risk"). In California and elsewhere,  
14 based upon my training and experience, underwriters should only issue coverage to insureds who  
15 have an insurable interest in a given risk.

16 12. Based on my review of the applications provided to Fireman's Fund that led to the  
17 issuance of the Fireman's Fund Primary and Excess policies, I do not believe that any material  
18 misrepresentation was made by the applicant. Herndon Partners, LLC ("Herndon") was clearly  
19 identified as the requested named insured on the face of the application for the Fireman's Fund  
20 Primary Policy. It would be my expectation, based upon my training and experience in the  
21 insurance industry, that an underwriter would recognize that an LLC such as Herndon is a legal  
22 entity.

23 13. Based on my experience in the insurance industry, as an underwriter, and upon my  
24 review of the documents provided to me to date in this case, it appears that the Fireman's Fund  
25 Excess Policy was issued on between 11 and 18 different residence exposures. However, it would  
26 be unreasonable for an underwriter or another similarly-situated individual employed by an  
27 insurance carrier considering whether to amend excess coverage to conclude that an individual  
28 (such as Paul Owahdi) would own 11 to 18 properties in their own personal name. At the very

1 least, based upon my training, education, and decades of experience, I believe that the standard of  
2 care for an underwriter would be to inquire further with the applicant or the applicant's  
3 representative as to the ownership interest in each of said properties.

4 14. This need for further inquiry would be especially acute where, as here, Herndon was  
5 known by Fireman's Fund to have an ownership interest in the property at 31522 Broad Beach  
6 Road, in Malibu, California ("Subject Premises"), based upon the application for the Fireman's  
7 Fund Primary Policy in October 2008. That fact alone would be sufficient to provide an  
8 underwriter with information that Herndon had an interest in the Subject Premises. At that same  
9 time, in late October 2008, it was also requested that Fireman's Fund increase the number of  
10 residences to be covered under the Fireman's Fund Excess Policy from 11 to 12, to include the  
11 Subject Premises. However, Fireman's Fund does not appear to have made any attempt to include  
12 Herndon on the Fireman's Fund Excess Policy by an additional insured endorsement. Notably,  
13 Fireman's Fund did specifically include Herndon as an insured on the Fireman's Fund Primary  
14 Policy through an additional insured endorsement.

15 15. In addition, based on the deposition testimony of Fireman's Fund Senior  
16 Underwriter Lynn Hadfield, no steps were taken to investigate independent sources of who or what  
17 Herndon was at the time that the Fireman's Fund Primary Policy was issued, or who held title to the  
18 Subject Premises. Ms. Hadfield did not search any databases, the Internet, or look to any  
19 government records as to these matters. At most, Ms. Hadfield appears to have based her  
20 understanding of the Subject Premises and Herndon on second- or third-hand information that  
21 would have been otherwise readily available to her directly. Based upon my training and  
22 experience, a reasonable underwriter should take such steps to research and investigate a potential  
23 risk in determining whether to issue an insurance policy or policies where they had any questions as  
24 to ownership interest or the nature of an LLC entity, such as Herndon. Not taking greater care in  
25 the investigation of a potential insured suggests that the insurer considered such matters to be of  
26 minor importance in the acceptance of the risk. In this case, Ms. Hadfield testified that she was the  
27 underwriter for both the Fireman's Fund Primary and Excess policies, and that she had knowledge  
28 that Herndon had an interest in the subject property. This interest should have been insured under

1 both the Primary and Excess Fireman's Fund policies.

2       16. Based on Fireman's Fund's acknowledgment that it knew Herndon owned the  
3 Subject Premises and its addition of the Subject Premises as an exposure on the Fireman's Fund  
4 Excess Policy, I would expect, based upon my training, experience, and familiarity with the  
5 standards in the industry that an underwriter should ensure that the individual or entity which owns  
6 a property would be provided with liability coverage in order for the property to be insured on an  
7 insurance policy. It is a basic premise of underwriting and the responsibility of any underwriter to  
8 ensure that, where a policy is to be issued, any owner of property insured under the policy is listed  
9 as an insured.

10       17. I understand additional depositions and discovery are planned in this case, and so I  
11 anticipate reviewing such later-developed additional information once it is provided to me as this  
12 case continues, and I reserve the right to amend the opinions provided herein based upon such  
13 additional material.

14  
15       I declare under penalty of perjury under the laws of the United States of America that the  
16 above is true and correct.

17       Executed this 1<sup>st</sup> day of July, 2016 at Newport Beach, California.

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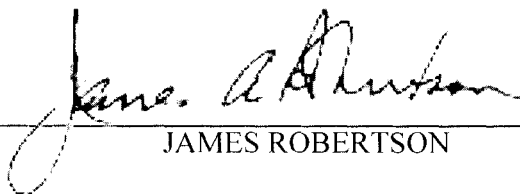
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JAMES ROBERTSON